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July 4. 1775.

[LORD KENNET Reporter.]

INFORMATION

FOR
JOHN WEDDERBURN, Esq; of Ballandean,
Defender;

A G A I N S T

JOSEPH KNIGHT, a Negro, Pursuer.

THE defender, sometime ago, purchased the pursuer, when a boy, The Fact.
from Captain Knight, Commander of a Guinea ship: He had
been brought by the Captain from that country, with a cargo of other
slaves.

As the pursuer was at that time too young to support the labour of
the field, the defender employed him in the house, bred him up as
his own personal servant; and when he returned to this country,
about four years ago, brought him along with him in that character.

The pursuer proved a tolerable servant, and, it is acknowledged,
the defender behaved to him with great indulgence: He caused him
to be taught to read and write, and had him baptized, after having
previously ordered that he should be instructed in the principles of
the Christian-religion.

The pursuer deviated a little from the strict rules of this new part
of his education, in an intrigue he had soon after with one of the
maids of the house. The defender gave him money to support the
girl in child-bed, and to defray the expences of the sickness and fu-
neral of the child; after this the pursuer having (as he said) married
his mistress, insisted that she should be received again into the house
as

as a servant. It was impossible to comply with this request; and the refusal, it seems (supported by a piece of information the pursuer had received from Mr Donaldson's News-paper with regard to the negro-cause before Lord Mansfield) induced him to lay a scheme for deserting the defender's service. He became discontented and sulky, and packed up his cloaths, and other articles the defender had given him, with a view of making an elopement.

Upon being informed of this, the defender presented a petition to the Justices of Peace of the county, setting forth the facts above mentioned, and praying for a warrant to apprehend the pursuer, that he might be examined; and upon the facts being proved, to find the defender intitled to retain him as a servant.

The pursuer accordingly appeared before the Justices at an after meeting, where he voluntarily emitted, and signed the following declaration: "That he was brought from the coast of Guinea by one Captain Knight, when he was very young, and carried to Jamaica, where, sometime after, upon the cargo being sold, he was sent up from the ship to the petitioner's (*i.e.* defender's) house in Jamaica: That he knows it is the practice of shipmasters to sell the slaves they bring from Guinea: That he does not know any thing of his being sold to Sir John, but that he remained with him from the time mentioned as a slave; and he brought him with him from Jamaica to Britain about four years ago. Declares, That he has served him ever since as a servant, and that Sir John furnished him with cloaths and other necessities; and that he has received money from him at different times: That he has no writing from Sir John, freeing him of his slavery, but that Sir John, about the time he was baptized, said he would give him his freedom seven years hence if he behaved well, for that now he was only beginning to be of use to him; and that it is not a twelvemonth since this conversation happened: And that Sir John, at that time, said he would not give him his freedom here, because he would starve, as no body would employ him; but that he would give him his freedom in Jamaica, and a house and some ground, where he might live comfortably all the days of his lifetime: That he intended to go away and leave his service some days ago, but that his cloaths were not packed up: That what made him resolve to go away was a paragraph he read in Mr Donaldson's News-paper, published the 3d July 1772, and from that time he has had it in his head to leave his service: That he has been entertained and cloathed as well as the rest of Sir John's servants; but that his stockings were generally coarse, except four pair; and that he got no regular pocket-money, nor nothing for wages; and that he is married: That he was married at

" Edinburgh

*Declaration
of Jos Knight
before the Justices
of Peace.*

"Edinburgh to one Anne Thomson, who resides in Dundee; and
 "that he was married at Edinburgh by one Mr Johnstone upon the
 "9th March last; and that the said Anne Thomson was out of Sir
 "John's service before that time."

Upon considering the petition and declaration, the Justices "Found
 "the petitioner intitled to the said Joseph Knight's service as a ser-
 "vant, and that he must continue as formerly; and decerned, and
 "appointed the clerk to furnish the said Joseph Knight with a full
 "copy or extract thereof."

The pursuer was much dissatisfied with this judgment: Told the
 Justices, that he would apply to the Sheriff, who was a better Judge
 than they; and had given a contrary decision in a late question.

Having saved his pocket-money for that purpose, he was according-
 ly as good as his word; and presented a petition to the Sheriff, set-
 ting forth the above mentioned facts: "And that his master insisted
 "upon his continuing a perpetual servant, or, in other words, a
 "slave; and praying that it might please the Sheriff to find, that the
 "petitioner cannot be continued in a state of slavery, or compelled to
 "perpetual service; and decern and ordain him the said Sir John
 "Wedderburn to pay to the petitioner the sum of £10 for his
 "bygone wages, and the sum of £10 as his current half-year's
 "wages till Whitsunday next; and to find the petitioner may en-
 "gage himself with another master, unless Sir John and he shall
 "agree for a further continuation of his service at such wages as he
 "shall contract for; and to inhibit and discharge Sir John Wedder-
 "burn from sending the petitioner abroad, or otherwise using him as
 "his menial servant; and to decern him to pay to the petitioner the
 "sum of £10 of damages and expences."

It was answered for the defender, That the cause had been already
 determined by the Justices of Peace: That as they were competent
 judges, it was *res habemus judicata*, and that it was incompetent for
 the Sheriff to review their proceedings. An extract was produced
 from the clerk to the Justices of Peace, and replies were given in
 for the pursuer: On advising of all which, "The Sheriff-substitute,
 "of this date, in respect of the proceedings before the Justices of
 "Peace, dismissed the process."

A representation was given in against this judgment by the pur-
 suer and answers for the defender, with which the Sheriff-depute, of
 made avisandum to the Sheriff-depute, and the Sheriff-depute, of
 this date, "Recalled the interlocutor of the 5th January last, and
 "found that the state of slavery is not recognized by the laws of
 "this kingdom, and is inconsistent with the principles thereof; and
 "found that the regulations in Jamaica concerning slaves, do not
 "extend

*The sentence of
 the Justices.*

*Knight's petition
 to the Sheriff.*

Jan. 5. 1774.

May 20. 1774.

*In interlocutor of
 the Sheriff Depute.*

" extend to this kingdom; and repelled the defender's claim to
 " perpetual service: And in respect the pursuer does not alledge
 " wages were agreed to be paid him, Repelled his claim thereto,
 " and decerned."

March 7. 1775.

*The case brought
 into this court by
 Advocation.*

Against this judgment, a bill of advocacy was presented by the defender, which coming in course of the roll before the Lord Kennet Ordinary, his Lordship, after advising memorials, was, of this date, pleased to make avisandum to your Lordships, and to ordain the parties to give in informations: In obedience to which, what follows is humbly offered on the part of the defender.

In a country where the invaluable blessings of liberty are so completely enjoyed, and where the people are with reason so jealous of it as they are in Britain, it is natural for a good man when he hears the very name of slavery, to take the opposite side of the question at once, without examination, and to consider himself rather as a legislator impowered to enforce his natural prejudices, than as a judge, whose province it is to determine according to the law of the land as it stands, leaving it to the legislative power to correct that law, if it should require any amendment.

The courts of this country are aware of, and superior to such prejudices; if the defender be well founded, he has no reason to be afraid of his cause; and when the question is properly explained, he is under no apprehensions that even the popular clamour will be against him.

No favour
 against the
 Defender.

The defender will here beg leave to observe, that it is almost unfair even to quote the word *slavery* against him; and that there is no occasion for entering into a discussion of that question in the present cause. It is acknowledged he was an indulgent master to the pursuer, when his authority over him was under no controul; and as he never chose to use him as a slave, he is under no necessity of claiming him as such; neither has he any intention of sending him back to the country from which he brought him; so that there can be no suspicion of the least design on his part of using the pursuer with any degree of severity; all that he claims, is a right to the service of the pursuer, to which he cannot doubt but he is well intitled.

At the same time, in as far as the demand for the pursuer's service may seem to be founded in the defender's right of property in him, he does not give up that part of his argument, but carries his claim no farther than to personal service during life, upon being supplied with cloaths and necessaries, in the same manner as any other servant.

As

As it had never been denied that the pursuer was always treated with humanity and indulgence, it is therefore impossible to imagine, that in the particular case under your Lordships consideration, there can be any real hardship in giving judgment in favour of the defender. The pursuer will be certain of being well cloathed and fed, and treated with gentleness, whereas if he be left to his own choice, he may very probably fall into a situation where he cannot enjoy these advantages.

As the pursuer's counsel, in the argument before the Lord Ordinary, thought proper to plead their cause exceedingly high, and insist that the defender had no title to the property of the pursuer as a slave, even in the West Indies. The defender shall, in treating the question, in the *first* place, endeavour to show, That he was certainly intitled to the property of the pursuer in Jamaica; and *secondly*, That in consequence of that, he ought to be allowed to carry the pursuer back with him to the West Indies, if he should chuse it, altho' he does not insist upon this in point of fact, as he has no such intention: And *thirdly*, He hopes to show your Lordships, that he cannot be deprived, either by law or equity, of a right to the personal service of the pursuer during life.

It was argued by the pursuer's counsel, that slavery was so abhorrent to the Law of Nature and Nations, that it could not be supposed to be admissible, or properly founded in the law of any country.

It is needless at present to trouble your Lordships with entering very deeply into what are allowed to be probable and natural causes of the origin of slavery among mankind, by almost every author who has wrote upon the subject.

It is natural for barbarous and weak nations, after a victory, to exterminate their enemies out of a principle of fear. The changing the torments they generally inflict upon their prisoners into perpetual service, certainly cannot be complained of by them: Neither is there any injustice in more civilized states, where the ideal wants of luxury have not yet made the rich dependent on the poor; when a man who has no property, nor means of being supported, binds himself to the perpetual service of another, who is able and willing to maintain him.

Those two causes of servitude are authorized by the Civil Law, from which we draw most of our knowledge. And Justinian says, "*Servi aut sunt ex Jure Gentium, id est ex captivitate; aut Jure Civili, cum liber homo sese venditari passus est.*"

The pursuer's counsel, who has certainly neglected no trouble for the behoof of his client, is pleased to dispute, that captivity is a proper origin of slavery, as a conqueror (he says) has no right to kill his captive.

Order.

Slavery, not
contrary to
Law of Na-
ture.

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Captivity a
reasonable
foundation
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It would be easy, by searching into remote principles in this manner, to bring very plausible arguments against every right established among mankind; but altho' the victor seems to have as good a right over the life, as over the property of the conquered, after reparation is made for the expences and damages of the war; and it was never disputed, that conquest is a good title to all the possessions of the vanquished; yet altho' the conqueror had no title to put his prisoner to death, still as in fact they generally did usurp that privilege, and as it was likewise in antient times, and is still among many nations, a practice, to subject the enemies which fall into their hands to the most excruciating tortures. In these circumstances, it was a wise and humane institution to set their avarice in opposition to their cruelty; and as the conquered reaped a clear advantage, in point of fact, from this alteration in manners, it gave a solid and equitable foundation to the obligation, in consequence of which they were saved from death and from torture.

The pursuer is likewise pleased to say, that the only origin of slavery which can apply to him, is that by birth, which is unjustifiable, as a child could neither be a delinquent, nor sell his liberty to another, nor ought to be subjected to any obligation from the crimes, captivity or contract of his parents.

Captivity ap-
plies to pur-
suer.

In the first place, the supposition of the pursuer is without any foundation; for he might have been taken a captive when a child as well as if he had been a man. And the same reasoning which takes place for making captivity a foundation for servitude, holds in the one case as well as in the other; nor was it ever heard of, that any nation after a conquest, enslaved the men and left the children at liberty.

Birth, a foun-
dation for ser-
vitude.

But in the second place, if servitude is once supposed to be established in the parents, the constitution of it by birth, or the continuation of it to their offspring, seems to be a natural consequence. It will not be denied that wherever slavery was established, this was the universal practice without a single exception, *partus sequitur ventrum*, was the rule of the Roman, as of every other law.

This universal practice of nations is surely sufficient for the defender's purpose in the present argument; but if we resort to reason, and the Law of Nature, it appears likewise to be well founded: For the child who is subjected to this apparent hardship, in reality owes its existence to that very circumstance; the master of his father and mother would, in all probability, not have consented to their cohabitation, nor taken care of the latter during her pregnancy, if he was to have suffered a considerable loss by the want of her labour, and the expence of the attendance necessary upon her, if he had no prospect of reaping any advantage from the future labour of the child. And indeed, in

in the present case, abstracting from all those considerations, the value of the pursuer's service during life, after being properly cloathed and which has been laid out in supporting and teaching him, even since he came into the possession of the defender.

The defender is at a loss to understand what the pursuer's counsel could mean, when they argued, that slavery was contrary to the Law of Nations; for if we consider the history of the world, from the creation till this day, as far as we are acquainted with it, it was established in almost every nation without exception, till very lately, that it has worn into disuse, in some countries in Europe; but nearly at the same time it was established by the inhabitants of those very countries, in the settlements which they had made in the western half of the Globe; so that it may be almost said, that there never was a nation in the world of any consequence in which slavery did not take place at every period of its existence.

It is well known that the most civilized nations of antiquity, the *Greeks* and *Romans*, were served almost altogether by slaves; and that their masters had the most unbounded power over them; nor was it ever abolished, notwithstanding the height of improvement and elegance to which those distinguished nations arrived. It took place with great severity among the ancestors of our neighbouring country, and of this. The antient Germans (as Tacitus informs us in his time) had the power of life and death over their slaves. It is now practised to the fullest extent by the Spaniards, Italians and Russians, even in their European dominions; and by all the nations of Europe in their settlements in America, and both the Indies.

So far from being contrary therefore, it may surely be averred, with truth, That slavery is supported by the practice, and by the Law of almost all Nations, which is the best commentary upon the Law of Nature.

The pursuer would seem now to have given up this part of his argument: He endeavours, in the first place, to make some distinctions without any difference or real foundation; (he says) That except the Spaniards and the Ecclesiastical State, who enslave the Moors, that no other European kingdom condemns captives to slavery.—But this is a mistake in point of fact; for the kingdom of Naples, and every state of Italy and the Portuguese, make slaves of all the Turks and inhabitants of the coast of Africa which they take in war; the Russians and Poles use their captives in the same manner; and Turkey in Europe is filled with Christian slaves. He adds, that the Christians do not enslave Christians, nor the Mahometans, Mahometans.—This is surely entirely foreign to the argument, as slavery is perfectly established in all those countries.

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Servitude not
contrary to the
Law of Nations

Pursuer's fact
and argument
on this head,
answered.

The pursuer seems conscious of the inaccuracy of this reasoning, and proceeds to argue, that there are few enormities which may not be supported by the practice of respectable nations, and the opinions of great men. This is no doubt giving up the point; but the defender humbly apprehends, that although a particular nation may sometimes err in one or two circumstances in its manners, yet that there is no example of any practice contrary to sound reasoning, which has taken place, almost by the universal consent of all nations, which is the case with regard to servitude; and that such a circumstance must be much stronger than all reasoning and wire-drawn arguments, which were ever conceived in closets, to show that such institutions are founded on reason, and agreeable to the Law of Nature.

Servitude approved of by the most virtuous writers on Politicks.

But not only has this institution been found necessary in practice; but those writers who have wrote ideal forms of government for the good of mankind in their closets: Even such of them as have shown the greatest respect for humanity in general, have still thought it necessary to suppose this practice to take place in their imagined perfect states of government. Plato in his Republic; Cicero in his treatise *De Legibus*; Sir Thomas More in his Utopia, and our countryman Mr Fletcher of Salton, have all considered the institution of slavery as a proper ingredient in a perfect government. Grotius, B. 2. C. 5. And Puffendorf, B. 6. C. 3. incline to the same opinion; and Bodinus, *De Republica*, L. 1. C. 1. observes with great reason and elegance, "*At verisimile non est omnes ubique populos ac nationes, tot reges ac principes, tam multos legumlatores virtute rerumque gerendarum usu clarissimos servitia tanta consensione suscepturos fuisse, si cum ratione ac natura pugnet.*"

The pursuer endeavours to take off the force of this quotation, by reciting a posterior passage from the same author, from which he would infer, that he lays down a doctrine perfectly contrary and opposite: But besides, that Bodinus is not to be suspected of such a glaring inconsistency, it is clear, that the passage quoted by the pursuer relates only to the motives by which individuals were sometimes actuated; and he supposes, that if they could have got more profit by killing their enemies, than by saving them, that generally they would have paid little regard to their lives. But this does not contradict the sentiment laid down in the above mentioned passage, that the institution of slavery would not have been introduced and supported by so many legislators, famous for their virtues and abilities, if it had been contrary to reason and nature.

Pursuer argues that Negroes are ill used in Colonies.

The pursuer is pleased to give a very long detail of the many hardships to which slaves are particularly subjected in our Colonies. He tells us, that they are used with such barbarity, that great numbers die

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die in the passage, and that upon their arrival they are hardly allowed any food, and at the same time, obliged to a degree of labour which it is impossible to support; and, that the general spirit of the colony-laws with regard to slaves, are conceived in so tyrannical a spirit, that it is clear the negroes must be treated in a very barbarous manner.

It would be very easy for the defender to refer to ten times as many accounts of slaves, who live perfectly happy and contented, and would not wish to alter their situation; but it would be very improper to trouble your Lordships, or to swell a paper, which will be at any rate too long, with such inconclusive narrations. And it is evident that altho' there may be a few exceptions, that it is absolutely impossible there can be any general foundation for such complaints. It will at least be allowed, that the most worthless of the Captains of vessels in the Guinea-trade, and of the planters in the West Indies, pay a pretty constant attention to their own pecuniary interest. It is inconceivable therefore, that a Captain of a Guinea vessel should not do every thing in his power to contribute to the health and proper accommodation of the slaves during the voyage, as his fortune depends entirely upon the number he brings to the West Indies, and the condition in which he exposes them to sale: And it is equally impossible that a planter should either under-feed or over-work his negroes, as he knows well that every deficiency of them must be supplied at a very great expence. And in whatever strict terms the colony-laws may be conceived, perhaps with a view of keeping the negroes in proper subjection, in the same manner as is the case with us in the articles of war, and regulations of the navy, yet still the same reasoning must operate upon the execution of them; and it is impossible, except the dispositions of men were entirely changed, and a race should be made who would prefer wanton cruelty and loss of character, to their interest and good name, that the hardships supposed by the pursuer should often take place, which no man in his senses would put in practice with regard to his ox or his horse.

Answer.

And indeed there is no doubt, that our abhorrence of the institution in question, proceeds more from what possibly may, than from what generally does, happen: For a man must be mad, and perfectly blind to his own interest, who does not behave with kindness and humanity to his slaves; as if they are not kept, not only in health, but good humour, he will be deprived in a great degree of the advantages he might derive both from their labour and offspring: And the condition of a poor man, even in a country like this, is without all doubt more helpless and liable to misfortunes, if he falls into any disease, than that of a negro in the Colonies; besides, at the

the same time, that when in health, he is infinitely harder wrought and has less relaxation.

But your Lordships will observe that these disquisitions of the pursuer's, are only calculated to raise a clamour, and are perfectly foreign to the only point presently in dispute: For the defender, as has been mentioned, restricts his claim to the right of the pursuer's service in Britain, and only enters upon the other parts of the argument in so far as they may be supposed to support that claim.

Slavery necessary in the West Indies.

But whatever the case may be with regard to this institution in other parts of the world, it is impossible to deny, that it is absolutely necessary in our Colonies in the West Indies; and that if we were to discontinue that practice there, we should not only lose all the wealth and support which we derive from those possessions, but must be reduced to purchase our sugars and the productions of those countries from other nations who should continue the present practice: For being accustomed to these commodities we could not now give them up; and altho' they might once be considered only as the luxuries, they are certainly now become the necessities of life.

That without the use of negro-slaves those Colonies must be abandoned, is evident almost without any reasoning. Even if the constitution of Europeans were adapted to labour in those climates, as the work of one day is sufficient, from the general fruitfulness and nature of the climate, to support a man idle for more than a week. It is evident, that, without compulsion, men never would be prevailed upon to bestow that labour which is necessary to produce the commodities with which we are now furnished from these settlements.

But there is another circumstance equally undeniable, which of itself proves this proposition beyond a doubt: The bodies and constitutions of Europeans (particularly the natives of the northern parts, such as Britain) are perfectly incapable of labour in the climates where sugar is produced. A negro, if not over-worked, can toil under the influence of a West India sun without impairing his health, or shortning his life, whereas a native of this country cannot support labour in the same proportion for a month, without certain destruction.

Even Georgia, tho' in a much more northern climate, was ruined at its first settlement, from the idea of excluding the labour of negroes; and the complaints against the first English Officers who settled in Jamaica for employing their soldiers there as labourers in the fields, are sufficient proofs of this fact; which indeed is now so generally acknowledged, that a white man is never employed to labour except in a house or a shade.

If there had therefore never existed a slave in the other parts of the world, that institution must have been introduced from absolute necessity in the West Indies; and it must be there considered as the Law of Nature, and of every nation which chuses to make use of these countries.

The defender shall not therefore trouble your Lordships with any answer to the pursuer's declamations against slavery in general, interspersed through the different parts of his memorial, as being totally foreign to the present question, which depends upon that established in the West Indies where it is absolutely necessary: His supposition, that these settlements could be carried on without it, from what has been said, will appear to be clearly chimerical in reasoning, and there is no kind of fact to support it. The story of some small territories in Asia, where sugar is raised by freemen, is not well authenticated; but no influence can be drawn from that circumstance to the management of our West India settlements.

In the *first* place, the people mentioned, only produce a little to supply themselves; and the inhabitants of that country are by nature fitted to the climate, and consequently can support the necessary labour which it is impossible for Europeans to do in the West Indies.

The defender shall in the *next* place proceed to show, that by the practice and Laws of England, and after the Union, by those of Great Britain, that the point is entirely fixed and established; and that the practice of furnishing America and the West India Colonies with slaves from Africa, is considered as perfectly legal, and supported by various grants from the Crown, and by different Acts of Parliament.

Slavery established by the Practice and Laws of England & Great Britain in Colonies.

The slave-trade was begun as soon as the West Indies came into the possession of Europeans, first by the Portuguese and Spaniards, and afterwards by the Dutch. The English engaged in that commerce even before they had any plantations of their own. Mr John Hawkins, 1562, fitted out three ships and loaded them with negroes on the coast of Guinea, which he sold to the Spaniards at St Domingo. In 1620, negroes was first introduced into Virginia, five or six years afterwards into Barbadoes, and have been always since made use of in the islands which were in the possession of the English.

In 1585 and 1588, Queen Elizabeth had granted a patent to a body of merchants for the Guinea-trade between the river Senegal and Gambia. By a third patent in 1592, their boundaries were extended from the river Nagneze to the south of Sierra Leon. In 1618, King James the I. granted a new charter to Sir Robert Rich and others; another was obtained from King Charles I. in 1631; and in 1651, the Rump Parliament granted another charter to new adventurers.

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The convulsions of the times hindered these different Companies from succeeding to any extent ; but in the 1662 (when by the navigation-act, foreigners were excluded from trading with our Colonies) it became necessary to apply seriously to the supplying of these different settlements with negroes ; accordingly, a new Company was instituted by King Charles the II. at the head of which was the Duke of York, and many persons of distinction, which undertook to furnish three thousands negroes annually to our Colonies. The affairs of this Company went likewise into disorder, on account of losses sustained in the Dutch war. And in the 1672, another corporation was erected, called the Royal African Company, to this the King, the Duke of York, and many of the nobility subscribed. Their capital amounted to L. 111,000, and they continued to trade with success for many years after.

It was resolved at the Revolution to extend this trade ; and accordingly in 1689, a convention was entered into with Spain for supplying the Spanish West Indies with negroes by the way of Jamaica.

In 1698, Parliament took this trade under their consideration, and past an act for regulating it: The act, viz. 9th and 10th, William III. " states the trade to Africa as highly beneficial to the kingdom, and " to the colonies and plantations thereon dependent." It provides for the erecting castles and forts for the better preserving and carrying it on, &c. In 1709 and 1711, the House of Commons voted some further provisions with regard to the better security of this trade. And in the 1712, the Company's affairs being much in disorder, an act was passed ratifying a composition they had entered into with their creditors ; and among others, the House of Commons came to the following resolutions : " That the trade ought to be " open to all the King's subjects : That forts and settlements on the " coast are necessary : That contracts and alliances are necessary to " be made with the natives, in order *that our plantations may be supplied* " *with sufficient negroes at reasonable rates.*"

By the treaty of Utrecht in 1713, a contract was made for introducing into the Spanish West Indies *four thousand eight hundred negroes annually for eight years to come*: And in 1726, the 13th of George I. an Act was passed for supporting a project of the South Sea-Company for taking in negroes at Madagascar to be sold at Buenos Ayres ; and the act recites, " *That the transportation of negroes from that island might " become a very beneficial branch of trade to the kingdom.*"

In 1720, upon surrender of the Royal African Company's charter, a new Company was erected by Act of Parliament, in which it is enacted, " That any of his Majesty's subjects, trading to Africa, may " erect ware-houses for security of their goods and *slaves.*" And, in

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1752, another act was passed "for making compensation to the Royal African Company for their charter-lands, forts, castles, *slaves*, &c." and to vest the same in the new Company, and annexed to this statute, as an inventory of those effects, among which are expressly enumerated "694 *slaves*, consisting of *tradesmen*, *canoe-men*, *labourers*, *women*, and *their children*." All these the Parliament of Great Britain purchased from the Royal African Company, and re-invested them by this statute in the new Company.

Matters continued in this state till the 5th of his present Majesty 1765, when another statute was enacted, by which "all the lands, *slaves*, forts, and other effects by former acts put into possession of the African Company, were taken out of their hands and vested in the Crown, and the trade was laid open."

From this deduction, it appears, that the negro slave-trade has been prosecuted by the English for upwards of two centuries, and has been supported by grants from the Crown almost for that period; has been likewise frequently confirmed by Parliament, and has been a particular article of treaties solemnly ratified with other nations; and, at one time, Parliament became themselves the purchasers of negro-slaves from the African Company.

And, indeed, by the act 5th of George the II. cap. 7. negroes are declared not only to be *slaves*, but "that they are to be held in the same light with any other object of property." It is there enacted, "That houses, lands, *negroes*, and other hereditaments, and real estates, shall be liable to and chargeable with all just debts, duties, and demands of what nature or kind soever owing to his Majesty or any of his subjects, and shall be asset for the satisfaction thereof in like manner as *real estates* are, by the Laws of England, liable to the satisfaction of debts due by bond or other speciality, and shall be subject to the like remedies, proceedings, and process in any Court of law or equity in the plantations, for seizing, extending, selling, or disposing of any such houses, lands, *negroes*, &c."

After this, it certainly cannot be denied, that by the Laws of Great Britain, the slavery of negroes is at least established in Africa, America, and the West Indies; and when the statute justifies and compels a sale, it surely must suppose that the property of the subject sold belongs to the purchaser.

The defender would not have given your Lordships so much trouble upon this head, if the pursuer had not thought it necessary for his argument, to deny that even in our Colonies a legal right to a slave could be defended by the Laws of Britain; and he likewise humbly apprehends, that the right which he claims over the pursuer, will follow without any difficulty when this point is once established.

The

Pursuer argues, that no proper Contract is shown.

The argument used by the pursuer against the defender's property in him as a slave, even in Jamaica, was founded principally on a denial that any proper contract had ever been entered into for that purpose. It was in the *first* place argued, that no contract could be sufficient for so far altering the rights of nature, as to make one man the slave of another. And it was asked, in the *second* place, even upon the supposition that this was allowable, where this contract was by which the pursuer's right was established?

Answer.

As to the *first* objection, it has been already fully shown, that slavery is not contrary to the Law of Nature, and has been supported by the practice of almost every nation in the world, till very lately that it has gone into disuse in some parts of Europe.

With regard to the *second* objection, as to the particular contract upon which the defender claims. The general case is, upon the coast of Africa, that parents are, by the laws of the country, intitled to dispose of their children; masters of their slaves, (for slavery is there established;) and conquerors of their prisoners got in war. It is believed that most of the slaves are purchased in consequence of one or other of these powers: And as such is the law of the country, the purchaser is surely intitled to retain that for which he has paid a just and fair price. If the pursuer means to insist for a written contract in the *Whidah* or *Anamaboe* language, the defender acknowledges he has none. He believes it is the custom to transact these matters only verbally; and as he purchased the pursuer at a fair sale, it is certainly unnecessary to go farther back: And nothing can be more ridiculous than to suppose that every negro in the West Indies, should have a title to insist that his master should bring a proof of the particular manner in which he had been purchased by the Captain of the vessel on the coast of Africa.

Pursuer argues, that Negroes are happy at home, and kidnapped by fraud.

The pursuer seems to give much weight to this pretended want of title in the defender; and, in order to enforce this part of his argument, has been at great pains to collect from many collections of Voyages and Travels, a number of stories with regard to the former happy state of the negroes before the Europeans came among them; and has given your Lordships a long account of several frauds which are practised by them for kidnapping and enslaving one another, from a desire of acquiring the commodities imported from Europe.

Answer.

In the *first* place, the pursuer acknowledges himself, that slavery was introduced into those countries before the arrival of Europeans, (as he says) by the Moorish Arabs. The defender indeed always understood, that this wandering nation never crossed the Gambia, nor penetrated into the coast from which we are at present furnished with slaves: But as it is acknowledged that slavery was completely established

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established in those countries before the discovery of them by the Europeans, that institution seemed to have been planted there by the hand of nature, and intimately connected with the dispositions and manners of the inhabitants: And indeed seems to be absolutely necessary, as from the prodigious fertility of those countries, and the fruitfulness of the women, if part of the inhabitants were not forced out of the country, either to the European settlements, or to the more inland parts of Africa, that part of the coast must soon be infinitely overstocked, and be subjected to every degree of want and misery; and perhaps reduced to the shocking necessity of feeding upon one another, which many authors, (equally credible with those founded on by the pursuer,) affirm to be practiced in neighbouring nations, under the same circumstances in other particulars, which have not the same opportunities of disposing of their superfluous inhabitants.

But however long this institution may have subsisted in those countries, as it was found there by the Europeans completely fixed and established, they cannot be blamed for the introduction of it, or the consequences which follow from that institution.

The pursuer was pleased to give a very lively description of the Golden Age, in which he supposed the negroes to have lived before the introduction of slavery among them; which seems to surpass that given by the antient poets of the age of Saturn. These stories are so common in all nations, that they are seldom introduced into serious argument, and must have been perfectly ideal in the present case, as we have no author who visited those countries before slavery was introduced: And if we are to judge of past times by the present, it is well known, since we have been acquainted with that part of the world, that the miseries of the inhabitants of the coast, do not proceed from the Europeans, but from the frequent irruptions of the numerous and hardier race of the inhabitants of the more inland and mountainous parts of Africa, by whom they are as regularly conquered and over-run, as the East Indians and Chinese are by the Tartars, and are treated in the most contemptuous and barbarous manner.

The King of Dahomy who conquered Whidah, and the adjacent countries in the beginning of the century, and the Jagas who ransacked all the coast from Benin to the Cape of Good Hope, are recent examples of this; and as the same cause always subsisted, viz. the vicinity of a narrow fertile coast to an extensive inland and mountainous country, it is probable, that, since Africa was peopled, that part of it with which the Europeans have any commerce, has been constantly

constantly and regularly subjected to the cruelty and caprice of its barbarous neighbours.

There is no reason therefore for supposing, that their condition has been rendered worse by the European trade. And if they had their choice they would probably prefer living in security in a British Colony, and being well clothed and fed, tho' subjected to labour, rather than have their heads stuck upon a pole, as an ornament to the court-yard of their conquerors, which is a common practice upon these irruptions of the Inland Africans.

With regard to the stories told by the pursuer of the different frauds committed in the kidnapping of slaves ;—many of them have probably no other foundation but the imagination of the Voyage-writers, (a race of men famed for inventions and want of veracity, since the beginning of the world): That in every commerce many frauds are committed, there can indeed be little doubt; but it is impossible to suppose, that an article of trade, carried on to such an extent, can be founded upon little tricks and deceit. It must be supported by the general manners, laws and constitutions of the countries, by which the States are furnished of about 100,000 negroes exported every year out of Africa; 100 perhaps may have been kidnapped or fraudulently detained; but this must have been confined to very small proportion, and the exportation of the rest must have been enforced by the regular laws and manners of the country. And, as far as this part of the argument goes, it would be as reasonable to dispute the title of the purchaser of an ox in the English mercate, because the practice of stealing cattle was not perfectly abolished in the Highlands, as to deny the right of a planter to his negroes, because there have been a few examples of fraudulent practices in the African-trade.

It would be for the honour of a nation, where it appeared that any fraudulent means had been made use of, to give redress to the unfortunate sufferers: But where the trade is allowed and practised by both nations, the general presumption must certainly be, That the property of the slave was honestly acquired; at any rate, it would not affect a fair purchaser who had no connection with the fraud.

But surely the authority of the statutes above mentioned, must put an end to this ideal and fanciful objection. By them, the negroes brought from Africa are declared to be the slaves and property of the purchasers in our Colonies; so that undoubtedly all further disquisition on this head is perfectly unnecessary: And whatever speculatists may do for their amusements in their closets, it would be exceedingly improper to encroach upon your Lordships time in pursuing any further such imaginary ideas.

There

There is a fancy which sometimes enters into the head, of the negroes themselves, when brought to this country, that baptism gives them a title to their freedom. The preacher's counsel seem not to insist much upon it: and indeed it hardly deserves a refutation.

The fact is, that slavery was established among the Hebrews, and continued so afterwards among the Christians, and is supported fictitiously very lately, in some parts of Europe, from a gradual change of manners.

In Leviticus, chap. xxv. ver. 44. It is said, "Both thy bond-man, and thy bond-maids, which thou shalt have, shall be of the heathen which are round about you; of them shall ye buy bond-men and bond-maids." And in Exodus, chap. xxi. ver. 2. and the following, there is described the manner in which even a Hebrew may become a slave to another.

It is evident that our Saviour gave no authority for any change: And neither the Apostles nor the first Christians ever thought of making any alteration, but left matters entirely upon the old footing. St Paul says in his first Epistle to the Corinthians, chap. vii. ver. 21. "Art thou called being a servant? Care not for it: But if thou mayst be made free, use it rather. For he that is called in the Lord, being a servant, is the Lord's freeman." After this, it is surely impossible to say, that any change was made by the introduction of christianity with regard to this article; and indeed it was never the doctrine of our holy religion, to encroach in any particular upon order or government, or to alter the conditions of men; but, on the contrary, to make them contented with their lot, and enable them to act their parts with propriety and cheerfulness in that situation, where providence had placed them.

The different authors of character, who have canvassed this point, are uniformly of the same opinion. Grotius says, lib. 2. cap. 5. "*Quod apostoli et antiqui canones servos edicunt ne se dominis subtrahunt generale est, et errori eorum appositum qui omnem subjectionem, tam privatam quam publicam, rejiciebant ut pugnantem cum Christiana libertate.*" And with regard to the practice of the first Christians, Guidelinus observes, in his treatise *De Jure Novissimo*, lib. 1. cap. 4. "Fuisse apud Christianos duitissime manumissorum ac vernarum usum, ac etiam *Eccllesias possidisse ex monumentis constat.*"

It never entered into the head of any of the nations of Europe, that baptism was to convert a slave into a freeman. Vinnius says, lib. 1. tit. 3. "*Ac mos est captos servos permanere, etiamsi religionem Mahumetis ejuraverunt eo quod servum esse non adversetur legi divina.*" And it is well known that it is the practice in all the French settlements

settlements to baptize their negroes. The Code Noir says, that
 “ Tout esclaves qui seront dans nous isles seront baptizé et instruit
 “ dans la religion, catholique apostolique et Romaine.”

It is likewise acknowledged, that by the law of England, the baptism of a slave confers no temporal privilege. The words of Lords Hardwick and Talbot, in an opinion given when they were Solicitors-General, are, “ And baptism doth not bestow freedom on him, nor make any
 “ alteration in his temporal condition in these kingdoms.” And this doctrine is clearly established by Judge Blackstone in the places afterwards recited.

The defender humbly hopes he has now shown that he had a most undoubted right to the servitude of the pursuer in the West Indies; and that his baptism could make no alteration in his condition. It falls therefore now to be considered, what effect the circumstance of his having been brought to Britain can be thought to have in law, with regard to altering the relation between the two parties.

Defender intitled to carry the pursuer back to Jamaica.

Although the defender never intended to make use of that power in the present case, and does accordingly not claim it at present, yet he humbly apprehends, allowing that, as long as the pursuer remains in this country, he may be intitled to the protection of the British Laws, yet, that the defender has an undoubted right, if he chuses it, to carry him back to Jamaica, the country from which he bought him: And he will beg leave to say a few words upon this point, as it is connected with the general argument.

Proper effect of bringing the pursuer here.

The defender will be extremely sorry to plead, that any person in this country should not be intitled, whilst he remains in it, to the protection of the British laws. But, at the same time, there is a medium in the best institutions; and there is no doctrine which does not grow absurd when carried too far.

It is perhaps right to preserve our ideas of liberty as pure as possible, that there should be no examples of slavery before our eyes in this country; but since we have chosen to be the first commercial nation in the world, and have interwoven our interests so with that of our settlements in other climates, that we cannot now exist without them; and as in these settlements the institution of slavery is absolutely necessary, it is surely carrying matters beyond all bounds, to advance that the single accident of landing in this island, should not only give a temporary protection, while the slave remains here, but should altogether dissolve the relation between the parties, and should deprive the master of the power of carrying back the negro perhaps with himself to the country for which he was intended by nature, and in which he can only be of real service to the community, or enjoy real happiness.

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There is no positive law containing such a prohibition; and surely there is no principle in equity or expediency which can empower a Court of judicature to interfere in the case, without the authority of a positive law.

In the first place, as property in the slave must be acknowledged to take place in the West Indies, it is surely an act of the greatest injustice to deprive a man of that property, from this single circumstance of his slaves being landed in Britain, especially in the present case, where neither party had the smallest suspicion that this was to be the consequence of bringing the pursuer into this country.

¹ Would be unjust to carry farther.

The preserving of property perfectly sacred, is the very basis of our constitution, and upon which even our liberty depends. Even in cases of absolute necessity, where public roads or streets are to be made, or forts are to be erected; or in the late case of the Scottish jurisdictions, (which were perfectly incompatible with good government,) property was never infringed in the smallest degree except by an act of the legislature; and the party always received full indemnification for his loss.

But in cases such as the present, if a West India master is not to be allowed to carry his negro back with him to that country, he is deprived of his property without any pretence even of seeming advantage, as every idea of that kind is sufficiently answered by a temporary protection of the laws whilst in Britain; and this piece of flagrant injustice is committed without the pretence of any law or act of the Legislature, and without any recompence being allowed to the party who is injured.

As the foundation of such a regulation is unjust, so the effects would be so contrary to reason, that it would be absolutely impossible to follow them out in all their consequences.

It is indeed a maxim generally acknowledged in law for this reason, that *statuta personalia effectum habent etiam extra territorum*; and that all questions concerning the state of a person are to be determined by the law of that country where his state has been fixed.

This is the opinion of Authors on that subject.

Huber lays down this as a maxim, lib. 1. tit. 3. *de Confist. Leg.* where he says, “Qualitates personales certo loco, alicui jure impressas ubique circumferri et personam comitari, cum hoc effectu, ut ubi vis locorum eo jure quo tales personæ, alibi gaudent vel subjecti sunt, fruuntur et subjiçiantur.”

And Argentræus, art. 218. *gloss. c. numb. 12.* with whom agrees Rodenburgh and others, lays down the same rule in the following words, “Cum enim ab uno certoque loco statum hominis legem accipere necesse esset, quod absurdum sit, ut in quot loca quis iter faciens

“ciens

"ciens aut navigans delatus fuerit, totidem vicibus ille statum mutaret aut conditionem, et uno eodemque tempore hic sui juris ille alieni futurus sit."

The pursuer, conscious of the force of this maxim, endeavours to elude it by a very ingenious device. He says that his domicile must be held to be either in Africa, where he was born, or in Scotland, where his wife resides, and not in Jamaica, where he had only a temporary residence.

It would appear that a residence of twelve or fifteen years was sufficient to constitute a domicile. But the pursuer will hardly better himself by resorting to Africa, as the circumstance of his having been sold in that country, will at least found a sufficient presumption that he was considered as a slave there, until he bring some proof of the contrary.

The consequences of the contrary doctrine would be unsupportable.

There is no doubt that a British vessel manned with British sailors, is subject to the laws of Britain; every cargo of slaves therefore carried from Africa to the West Indies might insist upon their *habeas corpus*, and demand either to be relieved or landed in Britain, as they were under the laws of this country; and it would appear that they were equally intitled to it (till some new law is made) with a negro who happens to be landed in England or Scotland.

Or let it be supposed, that by a tempest a Guinea vessel, or indeed the whole African fleet, should be driven into some of the ports of this island, is it possible to pretend that the law of this country would ruin a number of opulent merchants, to whom the cargo belonged, and who had entered into a fair trade, authorized by grants from the Crown, treaties with foreign nations, and confirmed by Acts of Parliament, and at the same time reduce the poor creatures themselves, to the most helpless and cruel situation as they could have no chance of earning a livelihood here, but must perish for want, as the pursuer is likely to do? Besides, if we suppose the accident to happen to great numbers ruining some of our Colonies in the West Indies, none of which could subsist without an annual supply of negroes from Africa?

In reasoning there is no distinguishing between one negro and twenty thousand; and the person who argues that the defender has not a right to carry the pursuer back to Jamaica, must allow, that in the case above mentioned, all these absurdities would be enforced; and surely no man can argue seriously, that such can be the law of any country inhabited by reasonable beings.

Numberless other consequences of such a doctrine might easily be figured, fraught with contradictions and injustice. Suppose a man of rank, in some of the countries where slavery is established, should chuse to amuse himself by travelling, altho' perhaps he might be restrained from using his dependents, with the severity which was permitted

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mitted in his own country; if he was to come to this island, could it be imagined that our laws would interfere to prevent his carrying along with him the same retinue which he had brought here, or should reduce a man, who had a hundred slaves the day before, to the same condition with the meanest of them, the instant that he landed in Britain?

If a French, Spanish, or Italian gally, manned with convicts, or with Turkish or Barbary slaves, should be driven into any of our ports, it must follow from the same argument, that those miscreants must be all set at liberty in Britain, and the state or private person to whom the vessel belonged, be deprived of their property.

With regard to our settlements in the West Indies in particular, it is evident, that the supposed regulation of a master's not having it in his power to carry his slave back to that country, after having been in Britain, must have very pernicious effects without supposing any uncommon accident, and allowing that all parties were upon their guard, and knew that the law was established.

It is, in the first place, surely a very great inconvenience, that a man of property in that country, should not have it in his power to bring over his personal servants, to whom he has been accustomed, when at the same time he cannot get their place supplied till he comes to Britain; but the bad consequences of this regulation do not stop at inconveniencies.

It has already been observed, that it is perfectly impossible to cultivate these countries by the hands of Europeans; labour in the field in the open air, is to them absolute destruction, and any kind of work is exceedingly pernicious.

The proper and humane method of cultivating these settlements, and carrying them on, is to throw all the labour upon the negroes, whose constitutions, being framed for that climate, are not hurt by it; but there are numbers of mechanical arts necessary to enable them to perform the different kinds of labour, of which, as they are utterly ignorant in Africa, so they cannot be instructed in them without an European education. It ought therefore to be a part of the police of both countries, to send such negroes, as have any superior degree of ingenuity and parts, to acquire a knowledge in the handicraft trades which are requisite in the West Indies; and upon their return there, they both better their own situation, and save the health and lives of British subjects.

The maxim founded on by the pursuer, excludes altogether this judicious, and almost necessary practice, as whatever a wise negro in that situation ought really to chuse, yet a master will not put himself to so much trouble and expence, when all the return he is to expect depends entirely upon the caprice of the slave.

So far from its being prudent to establish it as a rule, that a negro should not be carried out of this kingdom against his will, it would therefore appear to be a much more salutary maxim, that none of them should *be allowed to remain in it*, except with a view of being taught some mechanical trades, and afterwards to be carried back to our different settlements.

Whatever may be the case with regard to horses, and some other animals, the race of men in this country is certainly not to be improved by a mixture from Asia or Africa. It came out in proof, in the case of Somerset the negro, lately tried before Lord Mansfield, that there were upwards of 15000 negroes in England. If the above mentioned regulations were to be enforced, it is pretty evident, however pernicious the resolution might be to themselves, that from motives of vanity, none of those gentlemen would chuse to go away; but their number must increase daily and considerably.

Whenever the new law is known, and the negroes in America are apprized of it, it must naturally be the only object of every one of them to make his escape to this country, by which he obtains, as he thinks, so great a privilege: This idea will naturally make them sullen and discontented with their situation, and consequently bad servants in the colonies; and if they can only contrive to earn or purloin a little money, they will easily prevail upon masters of vessels to convey them to this island.

It appears evident therefore, that this supposed regulation would deprive us of all the advantage of bringing negroes here, viz. of carrying them back to their own climate, after being instructed in the mechanical arts, and would subject us to a very shocking calamity, viz. the debasing of our own race, by a mixture with the woolly heads and sable skins of Africa. If they should happen to acquire money, which is not at all impossible, we may see some of them returned for Cornish (the defender will not suppose Scottish) Burrows; and the second race, when improved by education, may arrive at the highest dignities of the state.

And indeed, whatever may appear upon a superficial examination of the case, the sad consequences of the pursuer's doctrine are discovered so clearly by experience, that it can never take place for any length of time; accordingly in the late French regulations, viz. in the fifth article of the Edict of October 1716, it is declared, that
 " Les esclaves negres et de l' une, et de l' autre, sex qui seront, conduits en France par leur maitres ou qui y' seront, par eux envoyés
 " ne pourront, pretendre avoir acquis leur liberté sans pretexte de leur arrivée
 " dans le royaume, et seront tenus de retourner dans nous colonies, quand leur
 " maitres le jugement apropos."

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It was always understood, that this was the law of England, as is laid down expressly in the opinions of Lords Hardwick and Talbot, which shall be afterwards mentioned; and by that law it is acknowledged, there are several cases, besides the present, in which a person may be transported beyond the seas without his own consent.

The Defender's doctrine supported by the Law of England.

Lord Hobart mentions, page 134, the case of an infant apprentice, bound by a proper indenture to a mariner or other person, where the nature of the service imports, that it is to be done out of the kingdom: And there is an express exception in the act of *habeas corpus* itself, 31. Charles II. cap. 2. paragraph 13. where it is enacted, "That persons who by a contract in writing agree with a merchant, or owner of a plantation, or any other person, to be transported beyond sea, and receive earnest on such agreement, are excepted from the benefit of the statute."

If even a Briton free-born, it is acknowledged by the very statute which secures our liberties, can in this manner be forced out of his country against his will. Can it be pretended that a negro, who cannot deny that he has been a slave from his original, first in Africa, and then in the West Indies, should be intitled to a privilege which is denied to the other?

With regard to this kingdom, as we had till lately little connection with foreigners, and no colonies of our own, many cases in point cannot have occurred: But as it must be acknowledged our ideas of liberty were not carried farther than those of the English; there can be no reason for supposing that our law would have supported the regulation in question. There is an anecdote mentioned by Mr M'Laurin in his late publication of remarkable cases, which shows, that it was not the idea of the Scottish government, that the connection of a master and slave was dissolved from the circumstance of taking refuge in this country.

And of Scotland.

It is mentioned in page 774, and is a proclamation of king James the IVth, about the year 1595, and is directed to the Sheriffs and other Magistrates in different counties, setting forth, That as a complaint had been made by John Faw the chief of the gypsies, that several of his dependents had abstracted themselves from him, and refused to obey him, and to leave the kingdom with him: The king orders all the Sheriffs, &c. to assist in seizing and securing the fugitive gypsies; and that they should lend John Faw for that purpose, their prisons, stocks, fetters, and all other things necessary thereto; And the proclamation ends with these words: "And als charge all oure liegis, yat nane of yame molest, vex, inquiet or truble ye said Johne Faw and his cumpany, in doing of yair lefall bessynes, or oyrways within our realme, and in yair passing, remanying or away-

“ away-ganging furth of ye samin, under ye pane above writtin;
 “ and sicklike, yat ye command and chairge all skippars, maisters and mari-
 “ naris of all schippis within our realme, at all ports and havyns quhair
 “ the said Jobne and his company sal happin to resort and cum, to resave
 “ him and yame yrin, upoun yair expenses, for furing of yame furth of our
 “ realme to ye partes beyond sey; as you, and ilk one of yame sicklike,
 “ will answer to us yrupoun, and under ye paine forsaide. Subscrivit
 “ with oure hand, and under oure Prive Seile, &c.”

Altho' there may appear to be something ludicrous in this proclamation, yet as the king was at that time near thirty years of age, and was always a man of learning, it shows beyond any doubt it was the general opinion, that a person who brought slaves or dependents into this country, was not only not to be prohibited, but was to be assisted in the strictest manner in carrying them out again, if they should endeavour to abstract themselves.

From what has been said, the defender humbly apprehends, that there is nothing in the Law of this country, nor in equity, which can impower a court of judicature, to hinder one who brings a person, who was a slave, from a country where that institution is established, to carry him back there when he shall think proper; and that if such a regulation was to take place, the consequences would be so exceedingly contradictory and inexpedient, that it could not long subsist.

The Defender
intituled at any
rate to the ser-
vice of the
Pursuer.

The defender shall now come to the last article to be mentioned, which will not require a long discussion; after what has been already said; and he will endeavour to show, that there cannot be any doubt that he is intituled to retain or reclaim the personal service of the pursuer.

As the pursuer has been always used in the most indulgent manner; (which indeed he acknowledges,) he has no argument from compassion or humanity to support him against the claim of the defender; and it appears undeniable that in point of equity, laying aside all the arguments with regard to the state of slavery, that the defender is fully intituled to what he demands.

Defender's
claim of ser-
vice equitable.

It is evident that if the defender had not purchased him, he must have been at present a common slave in Jamaica, if he had survived the labour of that state. The defender, besides having paid a considerable price for him, was at the expence of supporting him plentifully, long before he could be of any use, and of his passage from the West Indies to this country. He has altered his state from that of a slave in Jamaica, subject to hard labour and rigorous treatment, to that of a British servant under the protection of the laws; So that he must acknowledge, that when the defender gets what he demands,
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that he has received great benefit from his connection with him : And on the other hand it would surely be unjust and unequitable, if the pursuer, after having occasioned so much trouble and expence to the defender, should at the time when he is enabled to be of any real service to him, refuse to pay back any part of his debt ; and whenever he is rendered capable by the education he has received from the defender to procure his subsistence, should insist upon deserting his service.

The defender would likewise humbly apprehend, that in point of law there can be no doubt with regard to the claim on which he insists. It will not be disputed, after what has been said, that in Jamaica the pursuer was his property, and his slave, which comprehends under it all inferior degrees of servitude : Allowing therefore, (as has been mentioned,) that the laws of this country ought to give a temporary protection to every person residing in it, and even supposing, for arguments sake only ; That a master should not have the liberty of carrying his slave out of the country, from the suspicion that this power might reduce him again consequentially to a state of slavery, still the defender must humbly apprehend, that as his right in every degree of servitude in the pursuer was fully established before he came to this country, that the laws cannot possibly have a greater effect than to deprive him of such powers as are inconsistent with themselves and the practice of the country ; but that they can never be interpreted to deprive him (who is intitled to the absolute property of the pursuer) of a right to such service as is allowed, by the laws and practice of this kingdom, over free-born subjects and our fellow citizens.

It is surely impossible to deny that the proprietor of a slave is at least intitled to this demand, otherways he who had the absolute property of the negro would be in a worse situation than if he had him taken only bound as an apprentice for a certain number of years, or during life ; and it would certainly be ridiculous in a very high degree, that a slave who had been purchased in Jamaica, should be in a better situation, upon his arrival in Britain, than a free-born English or Scotchman, who had bound himself by indentures to the service of another.

If the defender be right in this argument, in point of fact, his claim is certainly not too high. It has been mentioned as an uncontrovertible fact, that slavery took place till within these few centuries past, almost in every nation in Europe, as it made a part of the manners both of our Celtic and German ancestors. The *adscripti glebæ* still remain in Russia, Poland, Denmark, Sweden, and great part of Germany ; and the state of villainage, (which was most compleat slavery,

Nothing in the Defender's claim of perpetual service contrary to Law ;

This appears from the general practice of Europe,

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slavery, altho' it has fallen into disuse,) still makes a part of the English Law; and till a new law be made, a person may appear in a Court of Record in England, and confess himself the villain of another. Lord Littleton, after all the lawyers, lays it down, sect. 175, "That every villein is either a villein by title of prescription, to wit, "that he and his ancestors have been villeins time out of memory; "or he is a villein by his own confession in a Court of Record." And the last method of constituting villenage, has never as yet been prohibited, and was acknowledged by Lord Mansfield in his speech in the case of Somerset.

The state of villenage was most perfect slavery. The description of it is among the ancient writers: "*He knew not in the evening what he was to do in the morning; he was bound to do whatever he was commanded.*" Co. Lib. 117.

and of Scot-
land.

Although our history has not been preserved so entire as that of our neighbouring nation, yet there can be no doubt that the same institutions took place among us: With us they were called *servi* and *nativi*, and are often mentioned in our ancient law, *vid. Reg. Maj. book 2. chap. 12. Sect. 4. 5. 2. Attach. chap. 56.*

It is not exactly known at what period this practice fell into disuse: It is probable it continued much farther down; but there is preserved in the records in the year 1368, a grant by King David the 2d, to a *servus* and *nativus homo* of his freedom. It is in the following terms: "*David, Dei gratia, Rex Scotorum, omnibus probis hominibus suis, ad quos presentes literæ pervenerint, salutem, sciatis nos, Willielmum filium Joannis latorem presentium, qui, ut a quibusdam dicibatur, noster servus et nativus homo, erat de Thanageo de Thanadyce, infra vicecomitat. de Forfar, nostrum liberum hominem fuisse, similiter, et omnes qui de eodem Willielmo exierunt; ita quod ipse et omnes exeuntes ab eodem, cum tota sua sequela, sine clameo nostro, vell. heredum nostrorum, quod aliquam notam servitutis libere voleant infra regnum nostrum ubicunque sibi melius videre expedire. Quare volumus et concedimus, quod prædictus Willielmus, et omnes exeuntes ab eodem liberi, sint et quieti ab omni servitute nativa in perpetuum, omnibus fidelibus nostris similiter inhibentes nequis ipsum Willielmum aut aliquem de sequela sua, contra hanc concessionem nostram, gravare, vexare, vell. aliquo modo inquietare, presumant, sub pena omnium quæ erga nos amitti poterint quocunque modo. In cujus rei testimonium præsentibus literis, penes ipsum Willielmum et sequelam suam pro perpetuo, remansuris sigillum nostrum præcipimus apponi. Apud Perth, ultimo die Februarii, anno regni quadragesimo.*"

It cannot therefore be denied, that slavery was originally allowed by

by the law and constitutions of this kingdom; and therefore in sound reasoning, it cannot be said to be inconsistent with them, except in so far as prohibited by statute and positive law.

The pursuer has entered into a very long dissertation, endeavouring to show, that servitude was never acknowledged by the Law of Scotland: He argues, that the German *Servi* were not properly slaves but only Soccomen: That some authors say, the Caledonians were derived from the Germans; probably the Scottish *nativi*, if they ever existed, were like the Soccomen of the Germans: That the Scots were never conquered, consequently rejected all slavery; and that it is probable that the passages in *Reg. Majestatem & Quon. Attachiamenta*, about *nativi* or villeins, have been inserted by the authors in their works of the Law of Scotland, although no such thing ever took place in this country.

The pursuer's argument, that slavery never existed in Scotland.

In the *first* place, it is sufficient for the defender's purpose, that the Law of Scotland does not reprobate the condition of a servant under indentures, or an apprentice, as that is all the right he at present claims over the pursuer. But this whole reasoning, though very ingenious, is certainly by much too vague and inconclusive for an argument before a Court of Justice; besides, that it is mostly founded upon mistakes in point of fact.

Answer:

It is acknowledged, that the Germans had power of life and death over their *Servi*, which was surely carrying their authority far enough; they did not use them in domestic service, because they were a rude people, and had no domestic servants: They were served (Tacitus says) in their houses by their wives and children; and there can be no doubt, that they might have converted them into domestic servants, if they had chose it; and the change would have been exceedingly favourable for the *Servi*.

The connection the pursuer forms between the Germans and the Scots, has no sort of foundation in history: The former are of the Teutonic race, and the latter of the Celtic; speaking languages, and enjoying manners, totally different from each other; and probably ignorant of the existence of one another, until a latter period of the world when the improvement of arts had opened a communication between distant countries.

The argument, that there could be no slaves in Scotland, as that country had never been conquered, is equally ideal. In the *first* place, there are many origins of slavery besides conquest; but all the south part of Scotland has been conquered by the Romans, and probably by the Northumbrians: The Danes had possession of great part of the North: Those countries had been again recovered by the Scots and the Picts, which formed the half of the body of the inhabitants

tants of the country ; had been conquered at once by Kenneth the III. Any one of these revolutions was sufficient to account for the introduction of slavery by the way of conquest alone.

The pursuer's supposition, that the passage in our old law books about *nativi* and *servi*, were introduced from the customs of other countries, can hardly be intended as serious. A lawyer who wrote a collection of laws of a country, could never be so particular in a description of persons in a certain state. If he knew that every one who read him must be conscious that such an institution had never existed in that country, no man would expose himself, knowingly, to such ridicule : And it cannot be supposed that the authors of these different books could be so ignorant of the situation of the country as not to know whether servitude really took place in it or not. But the charter of manumission above mentioned, if there were any doubt, puts an end to the controversy, and is demonstration, that that institution continued till the days of King David II. The discovery of one such charter makes it probable that others still remain, and that thousands have been lost.

Pursuer's argument, upon the supposition that villenage took place in Scotland.

The pursuer seems to be conscious that this point cannot be defended : And he endeavours to draw arguments in his favour from the supposition, that villenage existed in Scotland, which he had before attempted to controvert. For this purpose he argues, that as none of the methods of establishing villenage can apply to a negro, that therefore the slavery of negroes must be considered as prohibited : That the many methods of emancipation show the laws were inclined to liberty : That the condition of a villein was much better than that of a domestic slave ; and that it was really a step towards liberty, as it was introduced by the northern nations over the slaves they found in the conquered provinces.

Answer. These arguments are certainly very far from being conclusive. It would be very odd if the regulations of the *Quoniam Attachiamenta* could apply to a negro, as that system was written near two centuries before the discovery of the coast of Guinea. That emancipation should be made easy, was a humane and equitable law ; but it never took place except from the real or supposed consent of the master, or from his negligence, or crime ; neither of which apply to the present case.

It is a mistake in point of fact, that the condition of a villein was easy, as appears evidently from the description of them in the ancient law-books, particularly that above recited from Coke upon Littleton. And the other fact, that this species of servitude was introduced by the northern nations over the slaves in the conquered provinces, is another mistake in point of fact ; for we know that this, or

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The pursuer asserts, in the next place, That by the law of France a slave becomes a free man as soon as he enters the confines of these countries. That may be true in some particulars ; but it has already been shown from the *Code Noire*, that their master has the full power of transporting them back to the West-Indies whenever he shall think it proper.

But there still exists in this country a species of perpetual servitude, probably the remains of the original *adscriptitii glebae*, or *villeins*, which is supported by late statutes, and by daily practice, viz. That which takes place with regard to the *coaliers* and *salters*, where, from the single circumstance of entering to work after puberty, they are bound to perpetual service, and sold along with the works ; and indeed, in our law, there are several other examples of persons being bound to servitude during their lives. The act of Parliament 1597, cap. 272. enacts, " That stark beggars and their bairns be employed in common works, and their service, mentioned in the act of Parliament 1579, to be prorogate *during their lifetimes*." And, without going further, it is the case with every soldier and sailor ; the former of whom is shot, if he endeavours to make his escape at any period of his life, by express law ; and the sailor is subjected, during the same space by a practice universally admitted, to be seized by force, and sent against his will to the remotest corners of the world.

Many examples of greater servitude in this country than that claimed by the defender.

The pursuer is pleased to argue, that the *coaliers* and *salters* are not a remains of villenage ; and his argument for this is, that the use of coal in Scotland is so late a discovery, that it must have taken place long after villenage disappeared : And to prove this, he cites a passage from *Marco Paolo*, and another from *Aeneas Sylvius* ; from which it would appear, that these authors had been unacquainted with that mineral till the former saw it in China, and the latter in Scotland. And (the pursuer adds,) *Aeneas Sylvius* observes, that coal was only used in Scotland where it was barren of wood ; and as it is well known that, during the reign of the Jameses, Scotland was very much covered with wood, there could be very little occasion for coal.

Pursuer's objection as to this point.

This circumstance seems to be little connected with the present question ; but the pursuer's arguments appear to have no tendency to prove that the state of the *coaliers* in Scotland is not a continuation of the ancient villenage. By the charter above recited, that institution is traced down to the 1368 ; and in all probability it continued a considerable time longer. *Marco Paolo* went to China about 100 years before that ; so surely no inference can be drawn from the

Answer.

Italians

Italians being unacquainted with coal in the 1270, that this mineral was not discovered in Scotland before the 1368.

Æneas Sylvius was in Scotland in James the First's time. The defender does not know if the pursuer means, by the expression of *Jacobus quadratus*, to insinuate that it was in James the Fourth's time; but if he does so, its a mistake, for *Æneas Sylvius* died Pope in the fifth year of James III. viz. 23 years before James IV. succeeded; and there is no doubt that his journey to Scotland was in James the First's time, probably about the 1430. He then describes coal to have been in common use in Scotland; and it would appear very odd if there had been no coal-pits in Scotland 60 years before that, to which the charter above recited brings down the existence of *vileins* or *nativi*.

The quotation therefore from *Æneas Sylvius*, is a proof of the direct contrary of what the pursuer endeavours to infer from it.

The circumstance of two Italians being surpris'd at seeing pit-coal, affords no presumption that it had not been used for many centuries in Scotland. It happens every day, that Englishmen are not believed in that country, when they describe our coal to them even at present.

The defender does not know what the pursuer means by asserting, that it is well known, Scotland was very much covered with wood during the reigns of the Jameses. As *Æneas Sylvius*, who was an eye-witness, declares, That in the time of James I. it was perfectly bare of wood; and it is exceedingly probable, that the immemorial use of pit-coal before that period had induced the inhabitants to cut down all the wood, without leaving or providing sufficiently for that kind of fuel.

It is needless to enter, with the pursuer, into the disquisition, Whether the state of coaliers be a severe kind of slavery or not? as it is certainly much more so than that to which the defender claims to reduce him.

In answer to the statute 1597, cap. 272, relating to beggars, the pursuer observes, that it appears from several proceedings of the Privy Council, that any of the idle poor who were willing again to betake themselves to industry regained their liberty. It might be very proper to mitigate this law in the execution of it; but as the act mentions their service shall be prorogate *during their lifetimes*, it was certainly a clear proof that service during life was not considered as contrary to the spirit of the law of Scotland.

It is unnecessary to follow the pursuer through his endeavours to show, by long deductions and remote reasonings, that servitude or service for life never took place in Scotland, when the contrary

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contrary has been proved in the clearest manner: And indeed it must be allowed, that we had not drawn the boundaries of freedom with such accuracy as our neighbours; for it took place in our own memory until the late ward-act, that, *under the name of arriage and carriage, and services used and wont*, every tenant in Scotland might have been harrassed and ruined by his master.

But there can be no doubt, that the British Statutes above mentioned, at least, such as passed since the Union, must be considered as part of the Law of Scotland, as they were made by the British Parliament, now come in place of the Parliament of Scotland, and relate to colonies in which the Scots have now the same interest with the English. It is an exceeding fanciful idea, therefore, in the pursuer, to treat these statutes as the laws of a distant and foreign nation, with which we are totally unconnected. They in reality make part of the Law of Scotland; and therefore, by that Law, slavery is perfectly established in the West Indies; and the pursuer must have been considered, whilst he remained there, as the property of the defender.

The defender's claim against the pursuer, is not in reality so severe as that which takes place with regard to every apprentice. The circumstance, that the service of the one is generally for a stated period of years, and that here it is claimed for life; can make no difference; for an apprentice could certainly bind himself for a number of years beyond the probability of the duration of his life, nor can there be any reason why he should not have it in his power to bind himself for his life itself. Mr Erskine gives his opinion with regard to this question in the following words: B. 7. tit. 2. par. 62. "It has been said by some writers, That a person cannot bind himself to perpetual service, such obligation being contrary to liberty, which is an unalienable right. But it is hard to conceive how an engagement of that sort which is to last for life, is more inconsistent with liberty than one which is to expire after 20 or 30 years; and there appears nothing repugnant either to reason or the peculiar doctrines of christianity, in a contract by which one binds himself to perpetual service under a master, who, on his part, is obliged to maintain the other in all the necessaries of life." And he quotes *Grotius de Jure Bell.* B. 2. cap. 5. § 27. And by the English Law, contracts of servitude for life are allowed to take place.

The principle insisted on by the defender, is laid down in the clearest manner by the Law of England, in the late learned and elegant commentary of Judge Blackstone: Altho' he takes it for granted, that by the Law of England, a negro becomes free upon being landed in that country, yet wherever the subject occurs, he marks the distinction with the utmost precision, and lays it down invariably, that

Defender's claim not greater than that to which every apprentice is subjected.

Claim of service for life supported strongly by the Law of England.

that he still continues subject to the obligation he lies under of perpetual service to his master, his words are as follows, in different parts of his commentary.

Com. Vol. 1.
B. 1. chap. 10.
p. 127.

"And this spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, that a slave or a negro, the moment he lands in England, falls under the protection of the laws, and so far becomes a freeman, *tho' the master's right to his service may probably still continue.*"

Item, Chap.
14. p. 425.
and 426.

"And now it is laid down, that a slave or negro, the instant he lands in England, becomes a freeman; that is, the law will protect him in the enjoyment of his person and property. Yet, with regard to any right which the master may have acquired to the perpetual service of John or Thomas, this will remain exactly in the same situation as before; for this is no more than the same state of subjection for life, which every apprentice submits to for the space of seven years, or sometimes for a longer term." Hence too it follows, that the infamous and unchristian practice of withholding baptism from negro-servants, lest they should thereby gain their liberty, is totally without foundation, as well as without excuse. The law of England acts upon general and extensive principles: It gives liberty, rightly understood, that is, protection, to a Jew, a Turk, or a heathen, as well as to those who profess the true religion of Christ: and it will not dissolve a civil obligation between master and servant, on account of the alteration of faith in either of the parties: But the slave is entitled to the same protection in England before, as after baptism; and whatever service the heathen negro owed to his American master, the same he is bound to render when brought to England, and made a Christian."

Item, B. 2.
Chap. 26. p.
402.

"And as in the goods of an enemy, so also in his person, a man may acquire a sort of qualified property by taking him a prisoner in war, at least till his ransom is paid. And this doctrine seems to have been extended to negro-servants, who are purchased when captives of the nations, with whom they are at war, and continue therefore in some degree the property of their masters who buy them, tho' accurately speaking, that property consists rather in the perpetual service, than in the body or person of the captive."

These authorities are so express in point of the present question; and from the examples given before, it is so evident, that the right the defender claims in the pursuer, is not reprobated by the laws of this country, by which alone his power can be circumscribed, that he has no doubt your Lordships will find him entitled to the service of the pursuer.

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Altho' these quotations from Judge Blackstone are perfectly clear; yet the pursuer (it seems) looks upon himself, as under some sort of obligation to give an answer to them: He quotes only part of the passages, and endeavours to squeeze them into the doctrine, that it is only upon supposition that the negro has become voluntary bound in the West Indies to perpetual service, that the master should have any claim over him.

The defender will make no answer to this observation, but only beg your Lordships will read over the passages again, where it will appear evident, there cannot be the least pretence for such an interpretation, the first passage alone excludes altogether this idea, where it is said, "That a negro, the moment he lands in England, falls under the protection of the laws, and so far becomes a freeman, tho' the master's right to his service may probably still continue." There can be no doubt, if Mr Blackstone had had the distinction mentioned by the pursuer in view, he must have taken notice of it here, and not asserted the doctrine in general.

As the late decision in the Court of King's Bench, in the case of Somerset the negro, may be founded on by the pursuer; it may be perhaps proper to observe, (altho' that decision could not affect the Law of Scotland,) that still it was pronounced upon specialities which do not in any degree take place in the present question.

Case of Somerset put against Defender's claim.

It will be only necessary for that purpose to recite Lord Mansfield's Speech on that occasion, which was in the following words: "*We pay due attention to the opinion of Sir Philip York and Mr Talbot, in the year 1729, by which they pledged themselves to the British planters for the legal consequences of bringing negro-slaves into this kingdom, or being baptized; which opinion was repeated and recognized by Lord Hardwick, sitting as Chancellor, on the 19th October 1749, to the following effect: He said, That Trover would lye for a negro-slave; that a notion prevailed, that if a slave came into England, or became a Christian, he thereby became emancipated; but there was no foundation in law for such a notion: That when he and Lord Talbot were Attorney and Solicitor General, this notion of a slave becoming free by being baptized, prevailed so strongly, that the planters industriously prevented their becoming Christians, upon which their opinion was taken; and upon their best consideration, they were both clearly of opinion, That a slave did not in the least alter his situation or state towards his master or owner, either by being christened or coming to England: That tho' the statute of Charles the II. had abolished tenor so far, that no man could be a villein regardant; yet if he would acknowledge himself a villein, engrossed in any Court*" of

" of Record, he knew of no way by which he could be entitled to his freedom
 " without the consent of his master. We feel the force of the inconve-
 " niencies and consequences that will follow the decision of this ques-
 " tion; yet all of us are so clearly of one opinion upon the only ques-
 " tion before us, that we think we ought to give judgment without ad-
 " journment the matter to be argued before all the Judges, as usual in
 " the *Habeas corpus*; and as we at first intimated an intention of doing
 " in this case. The only question then is, Is the cause returned
 " sufficient for remanding him? If not, he must be discharged.
 " The cause returned is, The slave absented himself, and departed
 " from his master's service, and refused to return and serve him
 " during his stay in England; whereupon by his master's orders
 " he was put on board the ship by force, and there detained in
 " secure custody to be carried out of the kingdom and sold: So
 " high an act of dominion must derive its authority, if any such it
 " has, from the Law of the Kingdom where executed. A foreigner
 " cannot be imprisoned here on the authority of any law existing in
 " his own country. The power of a master over his servant is
 " different in all countries, more or less limited or extensive. The
 " exercise of it therefore must always be regulated by the laws of the
 " place where exercised. The state of slavery is of such a nature,
 " that it is incapable of being now introduced by Courts of Justice
 " upon mere reasoning, and inferences from any principles natural
 " or political; it must take its rise from positive law. The origin of
 " it can in no country or age be traced back to any other source;
 " immemorial usage preserves the memory of positive law long after
 " all traces of the occasion; reason, authority and time of its intro-
 " duction are lost; and in a case so odious as the condition of a slave
 " must be taken strictly. The power claimed by this return was ne-
 " ver in use here. No master ever was allowed here to take a slave
 " by force to be sold abroad, because he had deserted his service, or
 " for any other reason whatever. We cannot say the cause set forth by
 " this return is allowed or approved of by the Laws of this Kingdom;
 " therefore the man must be discharged."

This opinion seems to be founded upon the circumstance, that the
 master declared he was to send the negro abroad *there to be sold*; and
 for that purpose, had confined him without the authority of a judge:
 And it does not at all follow from it, that the same decision would
 have been given, if he had simply claimed the privilege, under the
 warrant of a judge, of carrying him with him, without mentioning
 his particular purpose, or without an intention to sell him: And in-
 deed it is almost certain, that the Court of Kings Bench did not in-
 tend to find, that a master might not compel a slave to return to the
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plantations, except where there was some particular speciality: For Lord Mansfield declared, that the Court paid due attention to the opinion of Sir Philip York and Lord Talbot in 1729; and that opinion fixes this general point in the strongest terms. It is in the following words: "We are of opinion, that a slave by coming from the West Indies, either with or without his master, to Great Britain or Ireland, doth not become free; and that his master's property or right in him, is not thereby determined or varied; and baptism doth not bestow freedom on him, nor make any alteration in his temporal condition in these kingdoms. We are also of opinion, that the master may legally compel him to return to the plantations."

The defender would humbly apprehend, that the Court of King's Bench, after mentioning, that they paid due attention to so high an opinion, would never have declared, that they were so clearly of opinion upon the only question before them, that they would not even adjourn the matter to be argued before all the Judges, as is usual in cases of *habeas corpus*, if their opinion had been in direct contradiction to that of Sir Philip York and Mr Talbot, when that is taken together with the expression in Lord Mansfield's speech, "*confining it to the only question before us*," there can be no doubt, that the decision of the Court of King's Bench did not contradict the general principle laid down by the two learned lawyers above named; and it is undeniable, that it must have proceeded upon a speciality, and it is immaterial whether the defender has fallen upon the right one or not.

But it is impossible to pretend, that this judgment can be founded upon at all, in opposition to the present claim of the defender. It does not insinuate in the most indirect terms, that the master was not intitled to the service of his negro; on the contrary seems strongly to support that doctrine, from the declaration made in the beginning; and after the authorities quoted above from Judge Blackston, there can be no doubt, that this claim is understood to be supported by the fixed Law in England.

The pursuer is pleased to argue, that the defender's restricting his claim to that of perpetual service, makes no difference in the case; for, that if slavery be unjust, it cannot produce a just claim, that no court can admit it partially and reject it partially, that no court can enforce domestick submission; that if the defender's claim be allowed, the laws of the Colonies must soon be adopted, &c.

If the pursuer is pleased to take it for granted, that every claim the defender has upon him is unjust; no doubt there is an end of the question: But he humbly apprehends the restriction of his claim to service during life, answers every objection, which can possibly be

Pursuer's argument, that the restriction of the Defender's claim does not alter the case.

Answer.

be made. Altho' his claim to the property of the pursuer in Jamaica was perfectly just, yet he does not insist upon that part of his right, which would seem not to be supported by the practice of this country: In that view, the defender humbly apprehends that no court will reject his claim, thus qualified, even if they should disapprove of slavery in its full extent; as to no courts enforcing domestick service; it is certainly done every day by Justices of Peace, and other inferior judges, when servants or apprentices run away from their masters: And it is undoubtedly carrying matters beyond all bounds, to say, That the laws of the colonies must soon be introduced, if the pursuer should be found intitled only to that degree of service which every servant is bound to pay his master, with this only difference, that in place of wages the pursuer is to receive cloaths, the purchase of which is in general the only object of wages.

The defender will not lengthen a paper, already too long, by a recapitulation of what has been said; but upon the whole, he humbly hopes, your Lordships will advocate the cause; and find that he is intitled to the service of the pursuer during life.

In respect whereof, &c.

JA^s. FERGUSON.

Joseph Knight a Negro of John Wedderburn of Bolton
 the purchaser when a Boy, was brought from the coast of Guinea by
 Capt Knight, and sold to the Dept of Jamaica
 The Dept. bred him up for his personal service and about 4 years
 ago brought him with him to Scotland. When he was taught to read
 and write, instructed in the Christian religion & baptised.
 He happened to get one of the mums in the house with
 child & afterwards married her. But in wedlock not giving
 her a home, or choosing to let her continue in the family, he
 pursued ^{himself} ~~himself~~ to leave his master.

JA^S. FERGUSON

Best wheres, &c.

the purchaser during life.
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 other inferior judges, when servants or apprentices of Peasants
 service; it is certainly done every day by justices of Peace, who
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Mr Wedderburn applied to the Justice of peace, Knight & submitted the declaration p. 2^d. and they found Mr Wedderburn entitled to his service p. 3^d. Knight on this applied to the Sheriff of Perth, who pronounced the interlocutor p. 3^d & 4th whereupon the cause was advocated by the Defender.

Pleaded by the pursuer

1st That Slavery is contrary to the Law of Nature, and altho the Defr. waives at present ^{insists on} the claim to him as his Slave, (tho with out passing from it) yet the perpetual servitude claimed is the same thing. That it is also contrary to the Law of Nations, and insists much on the Pursuer giving so answer as

2^dly That it is inconsistent with the Law of this country, that it at no period took place in it, and tho it had, is now abolished.

3^dly That by the Laws of France & other countries, when a Slave comes there he becomes free, much more must it be so by the Laws of this free State, and that it is usual for planters & others when bringing their Slaves to Britain, to buy them under Indentures which was not done in this case.

mentions the case of Somerset but does not insist on it. Insists on the Justice & Hardships &c.

Answered for the Defr.

1st That Slavery is undoubtedly founded in the Law of Nations, being received in some degree amongst all of them, from whence its being agreeable, or not repugnant to the Law of Nature may be argued.

2^dly That both by the English & British acts of Parlt. the Slave Trade is allowed, and protected. That the Defr lawfully got right to the Pursuer, and cannot be deprived of his property by bringing the Pursuer to Britain.

3^dly That the use of Negroes in the West Indies was absolutely necessary &c. and if the Negroes coming to Britain freed them the consequences would be dreadful. — That the Defr admits the master has the protection of the British Laws when here

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here for the security of his person, but that cannot deprive his master of his right to his service.

That the case of Somerset does not aid the argument, it was determined on specialties, and the great Judge in delivering his opinion in that case, declared the plea wrong in regard to attorney and solicitor's general's opinion in 1729, and Lord Mansfield's opinion in 1749. Both of which support the plea maintained by the Defendant.

JAS. FERGUSON

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